

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JESSE BOND	:	CIVIL ACTION
	:	
v.	:	
	:	
JEFFREY BEARD, Commissioner,	:	
Pennsylvania Department of	:	
Corrections, et al.	:	NO. 02-08592-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 15, 2005

In this death penalty habeas corpus case, I entered an order on October 18, 2005, scheduling an evidentiary hearing with regard to two specific aspects of the pending petition: the policy and practice in the Philadelphia District Attorney's Office with respect to the use of the so-called "McMahon tape" alleged to be a training tape instructing prosecutors to use race as a criterion for excluding potential jurors, and the knowledge of that tape on the part of the prosecutor in petitioner's trial; and to determine what mitigation evidence should have been, but was not, presented by defense counsel at trial.

The respondent has now filed a motion to reconsider that order, or, alternatively, to certify it for immediate appeal. The respondent's motion is, at best, premature: the hearing will provide information which will be useful in reaching a correct conclusion as to the validity of these particular claims in the habeas petition. In addition to developing the pertinent facts, the hearing will shed light on whether, as

respondent contends, the issues have been waived or are procedurally barred, or whether, as petitioner argues, his attempts to exhaust these claims were improperly frustrated by the state courts.

Merely scheduling a hearing is no indication of what this court's ultimate decision may be. No useful purpose would be served by permitting an interlocutory appeal, which would merely delay matters, and which may very well prove unnecessary. The pending motion will therefore be denied.

An Order follows.

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ORDER

AND NOW, this 15th day of November 2005, IT IS ORDERED:

That the respondent's Motion for Reconsideration, Or,
in the Alternative, to Permit an Immediate Appeal is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.